Tualatin Electric, Inc. *and* International Brotherhood of Electrical Workers, Local No. 48. Cases 36–CA–6874 and 36–CA–7099

May 12, 2000

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On November 10, 1997, Administrative Law Judge Burton Litvack issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief. The General Counsel and the Charging Party each filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

This backpay proceeding involves discriminatee Edward Campbell who was unlawfully discharged by the Respondent because he was a "salt"[3] and discriminatees Steven Dietrich, Paul Kingston, Gary Manuel, and Cal Caines who the Respondent unlawfully refused to hire because they were "salts."[4] Contrary to our dissenting colleague, we find no merit to the Respondent's contentions that the traditional construction industry backpay and reinstatement remedy should not apply to salts and that the discriminatees did not fulfill their obligation to mitigate backpay damages. As the Board's recent decision in *Ferguson Electric Co.*, 330 NLRB 514 (2000), makes clear, both the traditional remedial approach and mitigation analysis apply in "salting" cases.

At the outset, it is well settled that the discriminatees' status as salts does not deprive them of the protection of the Act. As the judge correctly found, the five discriminatees have been, at all material times, employees within the meaning of Section 2(3) of the Act. *NLRB v. Town & Country Electric*, 116 S.Ct. 450 (1995). Just as they do not forfeit their "employee" status or their statutory protection from unlawful discrimination, the salts do not forfeit their eligibility for backpay and reinstatement to remedy the discrimination. Under *Dean General Contractors*, 285 NLRB 573 (1987), the Board orders the traditional reinstatement and backpay remedy with the understanding that the respondent can introduce evidence at compliance regarding the likelihood of the discriminatee's transfer or reassignment to other projects subsequent to the job from which he had been unlawfully discharged or denied employment. It is the respondent's burden to establish that, under its established policies, the discriminatees would not have been transferred or reassigned to another job after the project at issue ended. See *Ferguson Electric*, supra, slip op. at 2–3. In the instant case, the Respondent has failed to offer any evidence to meet that burden.

Contrary to our dissenting colleague, we also find no merit to the Respondent's contentions that the discriminatees failed to satisfy their obligation to mitigate damages because they followed their normal pattern of seeking employment through the Union's hiring hall. As the judge observed, the Board has long held that, in seeking interim employment, a discriminatee need only follow his regular method for obtaining work. See *Ferguson Electric*, supra, slip op. at 5. In *Ferguson Electric*, the Board rejected an employer's argument that a failure to mitigate damages can be established solely on the basis of a union's limitations on the "universe" of employers to whom an organizer may apply for work. Id. In the instant case, the judge found that, while the Union readily utilizes unemployed members who are registered on its out-of-work lists as salts to assist in organizing specific nonsignatory contractors, there is no evidence that the Union grants unemployed members unlimited approval to work in nonunion jobs. Instead of subjecting themselves to possible internal union charges and sanctions by seeking work with nonsignatory contractors through newspaper advertisements, the discriminatees followed their accustomed method of obtaining work through the Union's hiring hall. See, e.g., *Big Three Industrial Gas*, 263 NLRB 1189, 1216–1217 (1982); *Local 90 Plasterers*, 252 NLRB 750, 754 (1980). We agree with the judge that, in doing so, the discriminatees

[1] The Respondent excepts to the judge's finding that the Union's December 23, 1993 letter did not toll the Respondent's backpay obligation to the five discriminatees. We find no merit in the Respondent's exception. As found by the judge, although it had abandoned its active organizing campaign, the Union continued to authorize its members to work for the Respondent after December 20 in order to obtain information in support of its area standards' picketing, and an unemployed member was hired by and worked for the Respondent into 1994. Further, the December 20 letter clearly states that the Union's change from an organizing objective to an area standards' objective was due to the chilling effect on its organizing activities brought about by the Respondent's unlawful acts. Absent these unlawful acts, the Union would have persisted in its organizing campaign and would have continued to utilize salts in that campaign. Inasmuch as the Respondent's misconduct played a part in the Union's canceling its organizing campaign, we find that its cancellation cannot be used as the basis for tolling backpay. To find otherwise would allow the Respondent to benefit from its own misconduct.

[2] By letter dated October 22, 1999, counsel for the Charging Party notified the Board that discriminatee Edward Campbell died on February 2, 1999, and requested that, in the event that the Board affirms the judge's award of backpay to Campbell, the payee be designated as his widow, Carol A. Campbell. In support of this request, counsel for the Charging Party submitted copies of Campbell's death certificate and a community property agreement between Edward Campbell and Carol A. Campbell. Accordingly, we shall order that the backpay due Edward Campbell shall be paid to the legal administrator of his estate or to that person authorized to receive the backpay award under applicable state law. *ABC Automotive Products Corp.*, 319 NLRB 874, 878 fn. 8 (1995).

[3] 312 NLRB 129 (1993), enfd. 84 F.3d 1202 (9th Cir. 1996).

[4] 319 NLRB 1237 (1995). As the judge found, under the Union's "salting" resolution, the business manager authorizes members or "salts" to seek employment with nonsignatory contractors for the purpose of organizing the employees of such contractors.

did not fail to make a reasonable effort to mitigate damages.

Similarly, we find no merit in the contention that discriminatee Campbell willfully failed to mitigate damages when he quit his interim job at Team Electric after the Union withdrew its authorization to work for that nonunion company. Following his unlawful discharge by the Respondent, Campbell sought work through the Union's salting program and was instructed to seek employment with Team Electric, the contractor on an airport prevailing wage job that the Union was attempting to organize. He was hired, but not placed on the airport project. Two weeks later, the Union terminated Campbell's authorization to continue working for Team Electric. Campbell quit the job rather than subject himself to internal union charges and penalties for working for a nonunion contractor. We agree with the judge that since, as discussed above, an employee is free not to seek interim employment where it would subject himself to internal union discipline, *Big Three Industrial Gas*, supra; *Local 90 Plasterers*, supra, it follows that an employee is also free to quit such employment for the same reason. Accordingly, we find that Campbell did not incur a willful loss of interim earnings by quitting his job with Team Electric after the Union withdrew its salting authorization.

In the instant case, the Respondent offers no evidence that the discriminatees failed to make a good-faith effort to follow their usual method of seeking employment, that the Union's policies unreasonably limited their job searches, or that the discriminatees failed to make reasonable efforts to mitigate damages. In the absence of such evidence, we find that the discriminatees are eligible for backpay in the amounts set forth in the judge's decision.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Tualatin Electric, Inc., Wilsonville, Oregon, its officers, agents, successors, and assigns shall pay to Edward Campbell[5] the sum of $8122, Steven Dietrich the sum of $5921, Gary Mangel the sum of $24,003, Cal Caines $7056, and to Paul Kingston the sum of $6046, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and state laws.

MEMBER HURTGEN, dissenting in part.

In this backpay proceeding, the five discriminatees were "salts," i.e., employees who were sent by the Union to the Respondent, a nonunion contractor, to seek jobs with the intent of organizing the Respondent's employees for the Union. One employee (Edward Campbell) was hired but then terminated by the Respondent; four were not hired. In determining backpay, my colleagues in the majority have applied certain principles with which I disagree.

First, the majority found that *Dean General Contractors*, 285 NLRB 573 (1987), should be applied in determining the amount of backpay due to the employees. Under *Dean*, the Board presumes that, absent discrimination, a discriminatee would have been sent to another job at the conclusion of the job from which he was fired. For the reasons set forth in my dissent in *Ferguson Electric Co., Inc.*, 330 NLRB 514 (2000), I disagree with *Dean*, at least as applied to "salt" situations.

My colleagues assert that the Respondent is free to establish that the discriminatees would have quit or refused to accept transfer or reassignment to another job. In my view, however, as discussed in my dissent in *Ferguson*, it is appropriate to place the burden of production of evidence on the Union. After all, the Union is the party which proclaims and administers the policies under which its members can/cannot work for employers.

Second, I disagree with the majority concerning the sufficiency of the efforts of the "salts" in seeking interim employment in order to satisfy their obligation to mitigate damages. The majority finds that it is sufficient for these union "salts" to follow their normal pattern of obtaining employment. Under that pattern, the "salts" seek employment only through the Union. They secure employment only with the Union's consent, and the Union will give its consent only with respect to those nonunion employers whom the Union wishes to organize. In my opinion, the Union cannot so limit the duty to mitigate damages. In this case, the Respondent presented evidence of numerous job opportunities for electrical workers with nonunion contractors in the Portland, Oregon area during the backpay period. It is not clear whether the Union gave its consent for the salts to work at these jobs. But, whether it did or did not, the result would be the same. That is, if the Union gave its consent for these "salts" to work on these jobs (so as to organize there), there is no reason for the "salts" not to work there. If the Union withheld its consent, that cannot be a justification for a failure to mitigate. The Respondent's backpay obligation cannot be dependent on the Union's willingness to consent to mitigation.

With particular respect to discriminatee Campbell, I find that he was not due any backpay from July 31 to August 24, 1992. Following his unlawful discharge on July 17, 1992, Campbell, on instructions from the Union, applied for work with Team Electric. The Union instructed Campbell to seek this work because it wished to organize Team Electric employees who were working on an airport job. Campbell was hired by Team Electric. However, Team Electric did not assign him to the airport job, but to another job. After 2 weeks, the Union terminated his authorization to work for Team Electric, and he

[5] Since Campbell is deceased, the backpay due him shall be paid to the legal administrator of the estate or to any person authorized to receive such payment under applicable state law.

quit the job on July 17. Contrary to the majority, I would find that this quitting of a job, because of the wishes of the Union, constituted a failure to mitigate backpay damages. I would accordingly award no backpay during this period.

Linda J. Scheldrup, Esq., for the General Counsel.
Thomas M. Triplett, Esq. (*Schwabe, Williamson, & Wyatt*), of Portland, Oregon, for the Respondent.
Norman D. Malbin, Esq., of Portland, Oregon, for the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. On September 15, 1993, the National Labor Relations Board (the Board) issued a Decision and Order in Case 36–CA–6874 (312 NLRB 129), finding that Tualatin Electric, Inc. (Respondent) terminated its employee, Edward W. Campbell, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) and ordering Respondent to reinstate Campbell to his former job or, if the position no longer existed, to a substantially equivalent position at another of Respondent's projects, to which Campbell would have been transferred at the conclusion of his work at the jobsite from which he was terminated, and make him whole, with interest, for any losses incurred as a result of his unlawful termination. On May 28, 1996, the United States Court of Appeals for the Ninth Circuit enforced the Board's Decision and Order. A controversy having arisen over the liability for and the amount of payment due pursuant to the Board's Decision and Order, on January 16, 1997, the Acting Regional Director for Region 19 of the Board issued a compliance specification, alleging the amount of backpay owed to Campbell by Respondent. Respondent timely filed an answer, denying that it owes the said amount of backpay. On December 18, 1995, the Board issued a Decision and Order in Case 36–CA–7099 (319 NLRB 1237), finding that Respondent had failed and refused to hire Steven Dietrich, Paul Kingston, Gary Mangel, and Cal Caines in violation of Section 8(a)(1) and (3) of the Act and ordering Respondent to offer to the four discriminatees immediate employment in positions to which they applied and for which they are qualified or, if nonexistent, to substantially equivalent positions and to make each whole, with interest, for any losses sustained as a result of Respondent's refusal to hire him. A controversy having arisen over the liability for and the amount of backpay due to each discriminatee pursuant to the Board's Decision and Order, on October 17, 1996, the Acting Regional Director for Region 19 issued a compliance specification, alleging the amounts of backpay owed to Dietrich, Kingston, Mangel, and Caines by Respondent. The latter timely filed an answer, denying that it owes the said amounts of backpay. Having been consolidated, the issues, raised by the compliance specifications and answers, were the subjects of a hearing before me in Portland, Oregon, on March 11 and 12, 1997. At the hearing, all parties were afforded the right to examine and to cross-examine witnesses, to offer into the record any relevant evidence, to argue their legal positions orally, and to file posthearing briefs.

In contesting its alleged backpay liability in both of the above-captioned matters, Respondent raises numerous affirmative defenses. Initially, Edward Campbell, Steven Dietrich, Paul Kingston, Gary Mangel, and Cal Caines sought employment with Respondent by virtue, and in aid, of a "salting" campaign, which was conducted against Respondent by International Brotherhood of Electrical Workers, Local No. 48 (the Union),[1] and common to both of the above-captioned matters is Respondent's contention that salting employees should not be entitled to any backpay and that, if salting employees are entitled to backpay, the Board's holding in *Dean General Contractors*, 285 NLRB 573 (1987), should not be applied.[2] Also, common to both matters are Respondent's contentions that the availability of work is to be judged by the "universe" of electrical work and not merely by the jobs to which members may be dispatched through the Union's hiring hall and that the Board's Rules have deprived Respondent of its due-process rights under the Fifth Amendment to the Constitution. Specifically, as to Case 36–CA–6874, Respondent contends that Region 19 incorrectly estimated Campbell's overtime earnings for Respondent in August and September 1992; that Campbell breached his duty to mitigate the amount of backpay, which is owed to him, by failing to continue to work at the project to which he was reinstated by Respondent and, "contemporaneously," to protest the validity of the reinstatement; and that Campbell willfully incurred lost compensation by quitting employment with another contractor. With regard to Case 38–CA–7099, Respondent contests the calculation of the gross backpay amounts in the amended backpay specification, asserting that the appropriate wage rate for the third quarter of 1994 should be adjusted downward to reflect money paid in lieu of certain fringe benefits for work on prevailing wage jobs. Additionally, as to that matter, Respondent contends that by the Union's letter, dated December 20, 1993, to Respondent limits the backpay claims of each of the discriminatees; that, rather than April 28, April 18, 1995, is the proper cutoff date for backpay; that, Gary Mangel willfully incurred lost interim earnings; that the cost of fringe benefits should be credited as interim earnings; that premium pay should be credited as interim earnings for employees Kingston, Dietrich, and Mangel; and that wages, which are earned in one calendar quarter but paid in the next, should be credited as interim earnings in the quarter in which earned.

Based on the record as a whole, including my observation of the demeanor of the several witnesses and the posthearing briefs, which have been carefully considered, I make the following

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[1] A so-called salting campaign, such as conducted by the Union in the above-captioned matters, involves a labor organization waiving its prohibition against members working for nonunion contractors and recruiting unemployed members to seek jobs with certain nonunion contractors. The program works with the members agreeing to engage in organizing on behalf of the labor organization amongst the employees of a nonsignatory contractor, and the labor organization promising to provide those members with a wage subsidy that would bring their nonunion wages up to union scale. Once the labor organization ceases its organizing campaign against the nonunion contractor and the salting program ends, the members are acutely aware that they must quit their jobs or be subject to possible, substantial internal union fines.

[2] In *Dean General Contractors,* the Board concluded that, in cases involving unlawful terminations in the building and construction industry, it would thereafter apply its traditional reinstatement and make-whole remedy with the understanding that, at the compliance stage, a respondent could offer evidence regarding the likelihood of future reassignment and transfer. Subsequently, the Board applied the *Dean General Contractors* rationale in fashioning a remedy for an unlawful failure to hire. *Casey Electric, Inc.,* 313 NLRB 774 (1994).

FINDINGS AND CONCLUSIONS

I. ISSUES COMMON TO BOTH CASES

Initially, I consider Respondent's contentions that "salts" should not be entitled to any backpay and, if entitled to backpay, receipt of such should be limited as the Union exercises utter control over their employment by nonsignatory contractors. In this regard, the record reveals that the Union's constitution and bylaws establish a mechanism for charging and disciplining members who work for nonsignatory contractors, and Gerald Bruce, the business manager/financial secretary of the Union, testified that, absent the Union's salting resolution,[3] any member, who works for a nonsignatory contractor, is subject to the Union's internal disciplinary procedure. Bruce further testified that the Union regularly re-evaluates all salting campaigns and determines whether the organizing should continue, and, if the decision is to terminate a campaign,[4] while union officials do not demand that members leave the salting jobs, "they withdraw authorization to work nonunion. And they inform the member . . . he could be subject to internal charges." In these circumstances, counsel for Respondent argues that, as the Union, rather than the member or the employer, controls the length of permissible employment and as the duration of primary or interim employment becomes an issue of conjecture and speculation controlled by a third party, the Board's *Dean General Contractors*, supra, rule for discriminatory refusals to hire or terminations in the building and construction industry should not apply to discriminatees, who act as salts while working for or applying for work with nonunion contractors.

I find Respondent's contentions to be without merit. Thus, notwithstanding that they bear the euphemistic label, "salts," the five discriminates (Campbell, Dietrich, Mangel, Kingston, and Caines), in the above-captioned matters, have been, at all times material, employees within the meaning of Section 2(3) of the Act. *NLRB v. Town & Country Electric*, 116 S.Ct. 450 (1995); *Westpac Electric,* 321 NLRB 1322 at fn. 3 (1996). Put another way, by voluntarily obligating themselves to organize on the Union's behalf while employed by Respondent or, in Campbell's case, by an interim employer, none of the discriminatees ever lost his status as a statutory employee. *AJS Electric*, 310 NLRB 121 at fn. 2 (1993). As the Board noted in *Westpac Electric*, supra at 1322, "the appropriate remedy for [employment discrimination] in these circumstances is reinstatement and backpay subject to *Dean General Contractors* . . . ." Notwithstanding, the clear Board law in this area, counsel for Respondent urges a different rule in cases dealing with union salting on grounds that, rather than the employee or the employer, a third party, the Union, controls the length of employment with either the respondent or an interim employer. However, the mere fact that a labor organization may influence or control the length of a discriminatee's employment with an employer should not be enough to deny or limit his or her right to a make-whole remedy for a violation of the Act. Thus, in *Big Three Industrial Gas*, 263 NLRB 1189, 1216–1217 (1982), a discriminatee had obtained interim employment as a so-called traveler, and, after approximately 7 weeks of employment when a local business agent made it known that travelers would have to leave their jobs in order to make room in a reduced work force for eligible local tradesmen, the discriminatee heeded the call and quit the job. The Board sustained an administrative law judge's conclusions that the discriminatee acted reasonably and that such did not constitute a willful refusal to maintain interim employment.[5] Likewise, members act reasonably when heeding their union's request that they abandon employment with a nonsignatory contractor at the conclusion of a salting campaign. Accordingly, Respondent's contention that mere participation in a salting campaign requires that discriminatees be found ineligible for the Board's traditional make-whole remedy is, I believe, antithetical to the policies and the purposes of the Act and without merit.

Counsel for Respondent next argues that the availability of interim employment herein is to be judged by the "universe" of electrical work and not merely by the jobs to which members may be dispatched through the Union's hiring hall. In support, Respondent offered into the record in excess of 250 newspaper advertisements for electricians or electrician technicians in the Portland, Oregon area during the time period June 1993 through April 1995, and, based on these job openings, counsel argues that "reasonable efforts to mitigate were not undertaken, by failing to seek work within the non-union segment of the electrical construction industry . . . ." While there may well have been numerous nonunion jobs available for electricians in the Portland area, the United States Court of Appeals for the Ninth Circuit has held that "a wrongfully discharged employee is required to make only a reasonable effort to obtain interim employment, and is not held to the highest standard of diligence." *Kawasaki Motors Mfg. Corp. USA v. NLRB*, 850 F.2d 524, 527 (9th Cir. 1988). In this regard, contrary to Respondent's counsel, the Board has long held that, in seeking interim employment, a discriminatee need only follow his regular method for obtaining work. *Big Three Industrial Gas*, supra at 1198; *Seafarers* (*Isthmian Lines*), 220 NLRB 698, 699 (1975). In the above-captioned matters, while none of the discriminatees sought to obtain nonunion jobs outside of the Union's salting program, each is an IBEW member, and each apparently followed his accustomed method of obtaining work, doing so through the Union's or another affiliated IBEW local union's hiring hall. In *Seafarers,* utilizing rationale equally applicable herein, the Board noted that "when the respondent chose to discriminate . . . it did so with knowledge of the work search habits of [the Union's] members and it ought not now be heard to complain that [the discriminatees'] habits bar [them] from backpay since it is clear that [they] fulfilled [their] search responsibilities as any [union-member journeymen electricians] normally would." Id. Finally, counsel for Respondent asserts that "a member who is out of work should apply for any electrical work which is available and if offered employment, seek to clear it with the union under the salting resolution." However, while the Union readily utilizes unemployed members, who are registered on its out-of-work lists, as salts to assist in

[3] The Union's salting resolution empowers the business manager to authorize members to seek employment with nonsignatory contractors for the purpose of organizing the employees of such contractors. The resolution provides that, in so doing, the members maintain their positions on the Union's out-of-work list and that "such members . . . leave the employer or job immediately upon notification" by the Union.

[4] For example, as herein, such might occur if, after being hired by the targeted nonunion contractor, the Union's salts are not assigned to the jobsite, at which the Union desires to engage in organizing.

[5] I am mindful of the fact that the holding in *Big Three* was overruled by the Board in *American Navigation Co.,* 268 NLRB 426 (1983), but note that such involved an issue unrelated to the quitting of interim employment.

organizing specific nonsignatory contractors, there is no evidence that the Union grants unemployed members unlimited approval to engage in salting nonunion jobs, and I agree with counsel for the General Counsel that the members would be subject to internal union charges and sanctions were they to gain employment with nonsignatory contractors through newspaper advertisements. Therefore, I find this contention to be without merit.

Respondent's final argument, common to both cases, is that it has been denied procedural due process inasmuch as it was not permitted to establish its defense that a proximate, intervening or superseding cause of harm to the discriminatees was misconduct by the Union. More specifically, counsel for Respondent argues that Region 19 of the Board improperly denied his prehearing information requests and his request to take prehearing depositions of union officials. Counsel further argues that, at the hearing, he was improperly denied the opportunity to adduce general evidence regarding the alleged illegal operation of the Union's hiring hall unless such specifically related to the dispatch of any of the discriminatees. In these regards, through a subpoena duces tecum, the Union's hiring hall records were made available to counsel during the hearing, and he made use of these to examine witnesses and offered portions as a hearing exhibit. Moreover, at the hearing, Region 19 made available to counsel all documents in its backpay file on which its calculations for the amounts of backpay, which were allegedly due to each discriminatee, were based. Without regard to the relevancy of Respondent's prehearing requests, the Board has recently reaffirmed that it "does not in ordinary circumstances permit pre- hearing discovery such as depositions" in compliance proceedings and that "neither the constitution nor any statute requires making such discovery routinely available." *David R. Webb Co.*, 311 NLRB 1135 at 1135–1136 (1993). Furthermore, during the hearing, the only issues before me concerned the amount of backpay due to the discriminatees, and Respondent was permitted to utilize the Union's hiring hall records insofar as they established that any discriminatee refused a dispatch for interim employment. In these circumstances, while it is true that Respondent was denied the opportunity to litigate the irrelevant issue concerning the general legality of the Union's hiring hall operations, I reject counsel's contention that his client was denied procedural due process in these proceedings.

II. ISSUES RELATING TO CASE 36–CA–6874

Respondent's initial contention is that, for purposes of calculating gross backpay, the compliance officer for Region 19 incorrectly estimated the amount of overtime earnings, which Edward Campbell would have received from Respondent had he continued to work on the Project Thunder project during August and September 1992. In this regard, in his answer to the compliance specification, Respondent's counsel asserted that "the proper measure is the 70 employees working during the months of August and September" and, based on their total overtime, set forth estimated overtime earnings for Campbell during the above 2 months, an amount which is substantially lower than the General Counsel's estimate. At the hearing, the Region 19 compliance officer, James Kobe, explained his methodology for calculating Campbell's gross backpay, including overtime earnings, and, in particular, his use of a representative complement of 32 journeyman electricians, whose average earnings were utilized as the basis for calculating Campbell's gross backpay amount, including overtime. Respondent offered no evidence in support of its counsel's assertions in his answer, and, in particular, failed to identify the 70 employees, who were mentioned in the answer, or to establish how it arrived at its overtime calculations. As the Board stated in *Rikal West, Inc.*, 274 NLRB 1136, 1137 (1985), a compliance officer is responsible for selecting the "most appropriate formula" for calculating backpay in a particular case, and it is recognized that creating a method to determine what would have happened is "frequently problematic" and "inexact." Thus, the Board need only utilize a backpay formula, which is "reasonably designed" to arrive at the approximate amount of backpay due. Kobe's approach to calculating Campbell's gross backpay appears to be a reasonable method, and Respondent offered no evidence to the contrary. Accordingly, I shall adhere to gross backpay figure as set forth in the amended backpay specification for Campbell.

Respondent's next contention is that Campbell breached his duty to mitigate the amount of backpay, which was due him, by failing to continue to work at a Wal-Mart project for Respondent and contemporaneously protest the assignment. As to this, the record reveals that, on July 17, 1992, Campbell was unlawfully discharged by Respondent from its Project Thunder jobsite in Wilsonville, Oregon; that, on August 24, 1992, pursuant to a settlement agreement, rather than to Project Thunder, Respondent reinstated him to work at a Wal-Mart project in Salem, Oregon; and that, 2 days later, on August 26, Campbell voluntarily abandoned his employment as he did not believe his assignment to the Wal-Mart project constituted proper reinstatement. Subsequently, the Ninth Circuit enforced the Board's holding that, as a matter of law, Respondent's assignment of Campbell to work at its Wal-Mart project did not constitute reinstatement to his former position, which remained in existence at the time of his so-called reinstatement. Nevertheless, relying on dicta in *Polynesian Cultural Centre Inc. v. NLRB*, 582 F.2d 467, 476 fn. 4 (9th Cir. 1978), counsel for Respondent argues that the Board should consider Campbell's voluntary abandonment of his job at Respondent's Wal-Mart project in computing the amount of backpay due him and conclude that, by quitting, the discriminatee willfully failed to mitigate said amount. However, inasmuch as the Ninth Circuit and the Board had concluded that his reinstatement was invalid, Campbell was not required to have accepted it under any circumstances. *Rikal West, Inc.*, supra at 1139. Moreover, as the record further reveals that the distance from Campbell's home to Salem was 40 miles further than the distance from his home to Wilsonville and that the Project Thunder job paid overtime, which was not paid, by Respondent, at its Wal-Mart job, the latter cannot be found to have been substantially equivalent to the Project Thunder job. In such a circumstance, "where . . . employment positions are not substantially equivalent to the position from which the discriminatee was discharged, the discriminatee-claimant may quit the non-equivalent employment without loss of pay . . . ." *Churchill's Supermarkets*, 301 NLRB 722, 725 (1991). Finally, as noted by the United States Court of Appeals for the Sixth Circuit in similar circumstances, requiring Campbell to remain working at the Salem Wal-Mart project for any reason would have been viewed by Respondent's other employees, at best, as their employer's "grudging" compliance with an order of the Board and, at worst, "as punitive." *NLRB v. Seligman & Associates*, 808 F.2d 1155, 1160 (6th Cir. 1986). Therefore, I reject this argument.

Respondent's next contention is that, in quitting his interim employment with Team Electric, Campbell incurred a willful loss of interim earnings for the period, August 1 through 24, 1992, and should receive no backpay for this time period. In this regard, the record discloses that, on being terminated by Respondent on July 17, 1992, Campbell returned to the Union's hiring hall and, due to his position on the out-of-work list, inquired whether there was any other contractor, against whom the Union desired to implement a salting campaign in which he could participate. He was informed that the Union desired to organize Team Electric and was instructed to seek a job with that contractor on an airport prevailing wage job. Campbell was hired by Team Electric but was not assigned to its airport project, and 2 weeks later, as Campbell was not placed on the job which the Union desired to organize, the Union terminated his authorization to continue working for Team Electric as a salt. In these circumstances and rather than subjecting himself to internal union charges and penalties for working for a nonsignatory contractor, on July 31, Campbell quit his job with Team Electric. There is no question that quitting interim employment, without good cause, is a willful loss of earnings warranting a reduction of backpay. *Churchill Supermarkets*, supra; *Newport News Shipbuilding Co.*, 278 NLRB 1030, 1033 (1986). On the other hand, the Board has concluded that discriminatees have established good cause for quitting interim employment when such a job is annoying or lacks prestige (*Shell Oil Co.*, 218 NLRB 87, 89 (1975)), or is one for which the discriminatee receives no fringe benefits payments (*J. S. Alberici Construction Co.*, 249 NLRB 751, 752 (1980)), or when a business agent requests that travelers adhere to internal trade union policies and do so in order to create job openings for eligible local union members (*Big Three Industrial Gas*, supra). Likewise, a union member, who voluntarily quits interim employment rather than subjecting himself to internal union charges and sanctions for working for a nonsignatory after the withdrawal of a salting authorization, has established good cause so as not to face a reduction of backpay. Such must, indeed, be true as discriminatees, who are members of labor organizations, may not be faulted for not seeking jobs with nonsignatory contractors when accepting such employment might result in the individual subjecting himself to fines or expulsion for disregarding union rules. *Plasterers Local 90*, 252 NLRB 750, 754 (1980). In these circumstances, I find Respondent's argument to be without merit.[6]

Based on the foregoing and inasmuch as I have found Respondent's arguments without merit, I find that Respondent's obligation to discriminatee, Edward Campbell will be discharged by the payment to him of the amount set forth in Appendix A hereto. The amount shall be payable plus interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[7] The net backpay figure in Appendix A is based on that which was set forth in the amended backpay specification, General Counsel's Exhibit 2 and states the backpay for each quarter in which backpay is due.

III. ISSUES RELATING TO CASE 36–CA–7099

At the outset, Respondent contends that Steven Dietrich, Gary Mangel, Paul Kingston, and Cal Caines are each entitled to no backpay after December 20, 1993. On that date, the Union sent the following letter to Respondent:

> As you are aware, [the Union] has in the past been interested in organizing the employees of Tualatin Electric, Inc. In response to this, Tualatin Electric terminated at least one . . . worker who supported the Union and has refused to hire workers who have a connection to the IBEW . . . . Unfortunately, Tualatin Electric's actions have had a tremendously chilling effect on our organizing effort. Accordingly, one purpose of this letter is to advise you that [the Union] no longer seeks to organize workers of Tualatin Electric and no longer seeks recognition from Tualatin Electric. We intend to use picketing to truthfully advise the public of Tualatin Electric's illegal acts. A second purpose of this letter is to inform you that we intend to inform the public that Tualatin's employees receive substandard wages and fringe benefits. . . . This letter is not intended to request that Tualatin Electric, Inc. enter into collective bargaining with [the Union] or that Tualatin Electric, Inc. refuse to employ any individual or group of individuals, nor do we intend to interfere with the rights of Tualatin's employees to work without becoming members of [the Union]. We do not seek to organize Tualatin's employees nor does this organization seek to represent Tualatin's employees. [The Union's] only object from this point in time forward will be to inform the public about the unfair labor practices that Tualatin Electric, Inc. has committed and to inform the public . . . that Tualatin Electric, Inc.'s employees receive substandard wages and benefits . . . .

Counsel for Respondent argues, based on the letter, that, as the Union disavowed any organizational objective after the date of the letter and as salting is based exclusively on organizational objectives, its salting campaign against Respondent effectively ended and that the discriminatees no longer could have worked for Respondent. Accordingly, counsel argues, Respondent's backpay liability to each was cut off.

Gerald Bruce testified that the Union's above-quoted letter did not end the salting campaign against Respondent as the Union continued to need information about its compensation to employees, the types of jobs, the effect of the picketing, and other matters.[8] Moreover, and despite the assertion in the letter

[6] Apparently, Respondent failed to immediately pay Campbell for the 2 days he worked at its Wal-Mart job in Salem, Oregon. A lawsuit was filed, and Respondent was found to have intentionally withheld Campbell's wages. As a result, under a State of Oregon statute, the discriminatee was awarded and received a civil penalty, totaling $2200, from Respondent. Counsel for Respondent contends the sum should be used as an offset against the total amount of backpay due to Campbell. I disagree with counsel for Respondent and agree with counsel for the General Counsel that, using the penalty as a backpay offset would be unconscionable. Thus, Respondent acted in violation of State of Oregon law by withholding Campbell's wages and was penalized for the conduct. To permit an offset would be to reward Respondent for its illegal act. Such is not permissible.

[7] Interest shall be computed at the "short-term Federal rate" for the underpayment of taxes as set forth in the 1986 amendment to 26 U.S.C. § 6621.

[8] Analysis of the Union's salting resolution discloses that the sole underlying purpose of the program is to permit the Union's business manager to "take any action necessary to organize the un-organized in order to provide work opportunities for the membership" and to empower him "to authorize members to seek employment by nonsignatory contractors for the purpose of organizing the unorganized

that the Union's only remaining object was area standards—to inform the public of Respondent's substandard wages and benefits, Bruce stated that the ultimate goal at Respondent was "always organizing," and that "we still have salts there." On this latter point, the witness testified that, in 1993, an unemployed member, Bob Fitzpatrick, was authorized to apply for work with Respondent as a salt, that Fitzpatrick was hired by Respondent and worked for 6 to 8 months into 1994, and that Fitzpatrick eventually quit after the Union withdrew its authorization for him to work nonunion as a salt. While I am troubled by the fact that the Union may well have dissembled in its December 20, 1993 letter to Respondent and by Bruce's seeming disingenuous testimony, the latter's testimony, regarding Bob Fitzpatrick, was uncontroverted by Respondent. As the only way an unemployed member could have worked for a nonsignatory contractor, such as Respondent, without subjecting himself to internal union sanctions, was by virtue of the salting resolution and as Fitzpatrick evidently worked for Respondent into 1994, one must conclude that, contrary to the Union's statements in its December 20 letter, the salting campaign against Respondent did not conclude on said date. Accordingly, contrary to Respondent, I cannot find that, as a matter of law, the four discriminatees' backpay was cut off as of December 20, 1993.

Next, Respondent questions Region 19's gross backpay calculation for the four discriminatees. As to this, the parties stipulated that the average quarterly hourly wage rates, set forth in Appendix A of the compliance specification, as amended, are the correct wage rates for computing gross backpay during each quarter of the backpay period with the exception of the $24.30-per-hour average wage rate for the third quarter of 1994. Compliance Officer Kobe testified that, while Respondent did provide him with a copy of a health care plan, as it provided no records that employee compensation included payment for benefit plans, such as the health plan or a retirement plan, in calculating gross backpay, his assumption was that such compensation represented only wages paid to employees. As to the disputed average hourly wage rate, at the hearing, counsel for Respondent contended that Respondent's employees' wage rates were inflated during the third quarter of 1994 as the employees were working on a prevailing wage job and as a portion of their wages represented compensation in lieu of benefits. In this regard, Respondent's president, Michael Overfield, testified that, on a publicly funded project, Respondent is obligated to adhere to the prevailing wage standard in the area and bid for the work accordingly. He added that the prevailing wage is comprised of two parts, wages and the benefits package, and stated that "my obligation is to pay [our employees] the wage as specified and the benefits package as specified, either in benefits and/or compensation to them." With regard to the third quarter of 1994, Overfield believed that the average employee wage of $24.30 reflected a prevailing wage job at the high school in Wilsonville, Oregon, but "we . . . did several prevailing wage jobs . . . they kind of blend together, so I'm not exactly sure on their dates." According to him, the highest hourly wage rate for that quarter was $28 per hour, which amount included wages and an amount for benefits,[9] which the employees[10] could use to pay for "retirement" or "whatever they did." In this regard, Overfield stated, "[W]e used a . . . money purchase retirement plan . . . we funded . . . their offset went directly to their retirement plan."[11] During cross-examination, Respondent's president conceded that nothing in the documents, which he gave to Region 19, establishes that the $28 hourly wage rate resulted from work on a prevailing wage job, and, asked if Respondent possessed documents supporting his testimony that the high wage rate resulted from prevailing wage work, Overfield asserted that Respondent has "certified" payroll reports, which would show an amount deducted from employees' compensation to pay for a money purchase retirement plan. However, as to this, Overfield conceded that he neither gave such records to the Region 19 compliance officer nor did he have the said documents in the hearing room. Further, there is no record evidence establishing the existence of any type of "money purchase retirement plan."

While the high hourly wage rates for the third quarter of 1994 may, in fact, result from some of Respondent's employees having worked on a prevailing wage rate job during that time period, the issue is whether the said employees' hourly compensation was paid entirely as wages or was a portion of such compensation deducted to pay for some sort of a retirement pension plan. The Region 19 compliance officer based his calculation of the average employee wage rate for the above time period on records, which were provided to him by Respondent, and, in this regard, Respondent failed to provide the compliance officer with any evidence, establishing that such an employee retirement pension plan existed or that such was financed by deductions from its employees' wages. Likewise, Respondent failed to corroborate the testimony of Overfield with any such evidence. In these circumstances, given the lack of supporting documentation, Overfield's testimony alone is insufficient to permit reliance on Respondent's suggested alternative hourly wage rate for the third quarter of 1994, and I must conclude that what Respondent did was to pay its employees prevailing wages and benefits as wages and that the General Counsel's computation of gross backpay, as set forth in General Counsel's Exhibit 10, more than meets the legal standard of permissible discretion in determining gross backpay. *Rikal West, Inc*., supra at 1138.

Counsel for Respondent next contends that the value of fringe benefit payments, made on behalf of each of the discriminatees by interim union-signatory employers during the backpay period, should be included as interim earnings, with the discriminatees' backpay adjusted accordingly.[12] In this regard, there is no dispute that Respondent pays wages only and

. . . ." Bruce averred that the gathering of information was useful for organizing purposes.

[9] On Respondent's payroll records, the dollar amounts "are combined."

[10] Overfield was unable to specify, by name, Respondent's employees, who worked on the prevailing wage job during the third quarter of 1994, and he was only able to state that employees had worked on such a job by their $28-per-hour wage rate. Asked if there was some other explanation, which would explain such high wage rates, Overfield answered, "[N]ot likely."

[11] During cross-examination, Overfield testified that "we paid the amount that was required by the Bureau of Labor & Industries for the job. The wage amount. The fringe benefit amount that was also required . . . we deducted out the standard things that we included and the difference between that we paid to . . . a money purchase plan."

[12] Union signatory contractors made fringe benefits contributions for employees in 1993 at the rate of $6.68 per hour, in 1994 at the rate of $7.21 per hour, and in 1995 at the rate of $7.52 per hour.

does not contribute to a health insurance plan,[13] a pension plan, or any other such plan. In such circumstances, according to Compliance Officer Kobe, the policy is to make no offset against gross backpay for whatever is paid on behalf of discriminatees as fringe benefits by interim employers. I believe Kobe correctly stated the Board's policy. Thus, the Board does assign a monetary value to fringe benefits payments received during interim employment, and equivalent such benefits, earned from an interim employer, are properly offset against gross such benefits, which are received from a respondent.[14] However, in my view, as Respondent pays no fringe benefits, no offset is possible, and any fringe benefits payments during interim employment must be likened to supplemental income, payment of which is not deductible as interim earnings.[15] To require otherwise would be inimical to the policies and purposes of the Act. Accordingly, I reject Respondent's argument.

Counsel for Respondent's next contention concerns the General Counsel's utilization of April 28, 1995, as the end date for the backpay period. Rather, counsel argues that the date should be April 18, 1995. In this regard, the parties stipulated that, on April 18, Respondent sent a letter, offering reinstatement to Dietrich, Mangel, Kingston, and Caines, to the Union's attorney; that the latter received Respondent's letter on the same date; and that, by a letter dated April 26, 1995, on behalf of the four discriminatees, the Union's attorney rejected Respondent's offers. Further, according to Compliance Officer Kobe, Region 19 was not informed of the above facts until May 1, 1995, when Respondent's attorney advised it of Respondent's offers and the rejections by the discriminatees. Kobe testified that the foregoing represent rather unusual circumstance; that, normally, a respondent "communicates directly with the discriminatees and, and the cutoff date is the date they [indicate their unwillingness] . . . to go back to work or they accept it;" and that Region 19 decided not to utilize April 18 as the cutoff date "because that was not the day of the communication, that was only the day [the offer] went to [the Union's attorney]." As to the selection of April 28, Kobe said that he decided to "split the difference" between April 26 and May 1 in order to arrive at the cutoff date. I agree with Kobe and counsel for the General Counsel that April 18 cannot be used as the backpay cutoff date. Thus, "a discriminatee upon receiving an offer of reinstatement has a fundamental right to a reasonable time to consider whether to return." *Penco Enterprises, Inc.*, 216 NLRB 734, 734–735 (1975). Herein, selection of April 18 as the backpay cutoff date would have allowed each discriminatee no time during which to consider Respondent's offer. As to April 26 or May 1, as either appears to have been an acceptable cutoff date, I cannot fault Kobe's decision to "split the difference."

Respondent's next contention concerns discriminatee Kingston. The record establishes that the discriminatee began interim employment for Christenson Electric on June 20, 1993; that he received his initial paycheck on June 27 after working a full week; and that he received his next paycheck on July 4 for work from June 27 through 30. The record further establishes that Region 19 credited the amount of earnings to the third quarter of 1993, when the wages were paid, rather than the second quarter, when the wages were earned. Counsel for Respondent "contends that interim earnings in a quarter means just that—what was earned, not when those earnings were paid." However, it appears that Region 19 followed Board policy, which is "to subtract interim earnings based on the quarter in which they are paid rather than the quarter in which they are earned." *Davis Coal Co.*, 275 NLRB 722, 725 (1985). Accordingly, Respondent's argument is without merit.

Next, Respondent contends that discriminatee Kingston should receive no backpay for the third and fourth quarters of 1994 and the first quarter of 1995, that discriminatee Dietrich should receive no backpay for the first and second quarters of 1994, and that discriminatee Mangel should receive no backpay for the third quarter of 1994 inasmuch as, for the applicable calendar quarters, each discriminatee earned significant amounts of "contractual premium" pay, which the General Counsel failed to deduct as interim earnings, and each discriminatee "could and did earn one and one-half to two times more than if working for Respondent for the identical hours." In this regard, the record establishes that, working on jobs for union signatory contractors and irrespective of the number of hours worked during Monday through Friday, union members earn time and a half for any hours worked on a Saturday and double time for any hours worked on a Sunday[16] and that, as employees of Respondent do not have the opportunity to work appreciable overtime,[17] Region 19 Compliance Officer Kobe did not deduct, as interim earnings, any overtime payments received by Kingston, Dietrich, Mangel, or Caines during the backpay period. The record further establishes that, for the calendar quarters at issue, W-2 reported income, from interim employers, for discriminatees Kingston, Dietrich, and Mangel, respectively, appears to be significantly greater than reported interim earnings for each. For example, while earning $61,000 in 1994 and almost $74,000 in 1995 from Christenson Electric, Kingston reported interim earnings of only approximately $12,000 during the third quarter of 1994, $13,000 during the fourth quarter of 1994, and approximately $26,000 during the first quarter of 1995 and admitted that the difference was overtime pay, received for voluntary work on Saturdays and Sundays. Compliance Officer Kobe explained that compliance policy is not to count earnings from overtime work for an interim employer as deductible interim income if the discriminatee would not have had the opportunity to work the same amount of overtime for the respondent.

Counsel for Respondent argues that the difference between the W-2 reported income and reported interim earnings during

[13] Apparently, Respondent does provide health insurance coverage for its employees, for which employees pay by having an unspecified amount deducted from their wages.

[14] See the Board's Casehandling Manual (Part Three), Compliance Proceedings, sec. 10535.3.

[15] For example, when a discriminatee works more hours for an interim employer than he did for his gross employer, only interim earnings based upon the same number of hours are offset. The excess is considered supplemental income and not deductible. *Regional Import & Export Trucking Co.*, 318 NLRB 816, 818 (1995). The identical considerations are applicable herein.

[16] Counsel for Respondent terms the contractual payment for Saturday and Sunday work, which union members receive, "premium pay." At the hearing, counsel for the Union represented that, under the Union's electrical industry collective-bargaining agreement, payment for Saturday and Sunday work is classified as overtime pay and premium pay is received for work on the swing and graveyard shifts.

[17] Kobe testified that his analysis of Respondent's payroll records established that overtime for employees was "so minimal, it . . . just really didn't enter into the calculations."

For overtime, Respondent pays time and a half for any hours in a week in excess of 40.

the backpay period for the above three discriminatees represents premium pay, for which no "extra effort" was expanded by any of the discriminatees, rather than overtime pay, which forms the basis for the policy explained by Kobe. Without commenting on whether any of the discriminatees expanded extra effort in working what the Union's electrical industry collective-bargaining agreement terms overtime work, Board policy seems clear. Thus, citing *United Aircraft Corp.*, 204 NLRB 1068, 1073 (1973), the Board, in *EDP Medical Computer Systems*, 293 NLRB 857, 858 (1989), stated that "a backpay claimant who 'chooses to do . . . extra work and earn . . . added income made available on [an] interim job' may not be penalized by having those extra earnings deducted from the gross backpay owed by the Respondent.'" I think that the Board policy governs in the instant matters, and notwithstanding whether the discriminatees received overtime pay or premium pay or expanded extra effort or minimal effort to earn the money, I find Respondent's counsel's arguments lacking in merit.

Respondent's final argument concerns discriminatee Mangel. Counsel argues that the discriminatee intentionally declined to work for a 6-month period between September 1993 and March 1994 and that, therefore, he should not be entitled to backpay for the final quarter of 1993 and the first quarter of 1994. In this regard, there is no dispute that Mangel signed the Union's out-of-work list on being unlawfully denied employment by Respondent; that the Union maintains a hiring hall rule, permitting a member to work a cumulative total of 29 days without losing his place on the out-of-work list and that, after working a "short call" 24-day job until the end of August 1993,[18] Mangel passed available jobs on September 14, 1993, October 1 and 11, 1993, January 10, 18, and 25, 1994, and March 16. While he conceded he could not recall why he turned down any specific job, Mangel explained that he passed jobs during this time period when "they were either special skills that I didn't have or they were jobs that were so short . . . had I taken one and worked a week or two, I would have ended up at the bottom of the [out-of-work list] . . . ." He added that his intent was to be available for a long-term job, which he eventually obtained with Christenson Electric. At the outset, an employee must make a diligent or reasonable search for interim work. *NLRB v. Arduini Mfg. Co.*, 394 F.2d 420, 423 (1st Cir. 1968). Herein, Mangel worked a 24-day job during August 1993 and was aware that working another short call job might cause him to lose his position on the out-of-work list and, thus, jeopardize his chances for dispatch to a long-term job. "A discriminatee may legitimately refuse a referral if he can reasonably expect to obtain employment in the future which would clearly be a better opportunity." *Plumbers Local 305 (Stone & Webster)*, 297 NLRB 57, 60 (1989). Moreover, in *Electrical Workers IBEW Local 2148* (*Newberry Industrial*), 281 NLRB 746 (1986), a fact pattern similar to that which is involved in the instant matter, the Board adopted an administrative law judge's finding that it was "not unreasonable" for a member to have refused a referral to a 2-week job when acceptance would have resulted in the member losing his place on an out-of-work list and that, therefore, such did not constitute a willful loss of employment by the member. Id. at 760 and 761 fn. 53. In these circumstances, especially noting that, by obtaining a long-term job, Mangel benefited Respondent's backpay position, I reject Respondent's argument and find that Mangel's refusal of short call referrals did not constitute willful loss of employment.

Based on the foregoing and inasmuch as I have found Respondent's arguments to be without merit, I find that Respondent's obligations to discriminatees Dietrich, Mangel, Caines, and Kingston will be discharged by the payment to them of the respective amounts set forth in Appendix B. The amounts shall be payable plus interest to be computed in the manner set forth in *New Horizons for the Retarded*, supra. The net backpay figures in Appendix B are based on that which were set forth in the amended backpay specification, General Counsel's Exhibit 11. Appendix B sets forth figures for each quarter in which backpay is owed to each discriminatee.

On these findings and conclusions and on the entire record, I issue the following recommended[19]

ORDER

The Respondent, Tualatin Electric, Inc., Wilsonville, Oregon, its officers, agents, successors, and assigns, shall

In Case 36–CA–6874, pay to Edward Campbell $8122 plus interest computed in the manner set forth above.

In Case 36–CA–7099, pay to Steven Dietrich $5921 plus interest computed in the manner set forth above; to Gary Mangel $24,003 plus interest computed in the manner set forth above; to Cal Caines $7056 plus interest computed in the manner set forth above; and to Paul Kingston $6046 plus interest computed in the manner set forth above.

[18] Mangel explained, "It was the end of the job."

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

APPENDIX A

NAME	YEAR	QUARTER	GROSS BACKPAY	NET. INT. EARNINGS	NET BACKPAY
Campbell	1992	3	$10,005	$2,988	$7,017
	1992	4	6,988	5,883	1,105
	1993	1	6,976	10,969	0
				TOTAL NET BACK PAY	$8,122
		To April	$1,838		

APPENDIX B

NAME	YEAR	QUARTER	GROSS BACKPAY	NET. INT. EARNINGS	NET BACKPAY
Dietrich	1993	2	$2,374	$296	$2,078
	1993	3	8,722	11,675	0
	1993	4	9,162	10,428	0
	1994	1	9,128	5,285	3,843
	1994	2	10,314	10,722	0
	1994	3	11,761	12,447	0
	1994	4	9,966	11,064	0
	1995	1	10,517	10,992	0
	1995	2	3,319	5,486	0
				TOTAL NET BACK PAY	$5,921
Mangel	1993	3	$7,916	$4,224	$3,692
	1993	4	9,162	0	9,162
	1994	1	9,128	0	9,128
	1994	2	10,314	8,667	1,647
	1994	3	11,761	11,387	374
	1994	4	9,966	11,064	0
	1995	1	10,517	12,397	0
	1995	2	3,319	3,595	0
				TOTAL NET BACK PAY	$24,003
Caines	1993	3	$8,453	$9,513	0
	1993	4	9,162	9,151	$11
	1994	1	9,128	11,254	0
	1994	2	10,314	11,710	0
	1994	3	11,762	11,341	420
	1994	4	9,966	8,957	1,009
	1995	1	10,517	4,901	5,616
	1995	2	3,319	3,600	0
				TOTAL NET BACK PAY	$7,056
Kingston	1993	2	$1,714	$890	$824
	1993	3	8,722	10,906	0
	1993	4	9,162	13,169	0
	1994	1	9,128	12,694	0
	1994	2	10,314	11,839	0
	1994	3	11,761	8,414	3,347
	1994	4	9,966	8,091	1,875
	1995	1	10,517	10,958	0
	1995	2	3,319	3,319	0
				TOTAL NET BACK PAY	$6,046